

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B04
PLR-124475-13
Date:
December 23, 2013

Legend

Decedent =
X =

Dear :

This responds to your personal representative's letter of May 21, 2013, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to supplement a timely filed Form 8939 (Allocation of Increase in Basis for Property Acquired from a Decedent).

The facts and representations submitted are as follows. Decedent died in 2010. At his death, Decedent owned all of the interests in a closely held company. The executrix of Decedent's estate retained a tax professional to help her timely file the Form 8939. On the form, the tax professional reported that Decedent owned only X percent of the interests in the company.

On the Form 8939, the estate reported that Decedent had unrealized losses from his interests in the company and allocated these losses as additional basis to other property reported on the Form 8939 pursuant to section 1022(b)(2)(C)(ii) and section 165(c)(2). However, since the tax professional believed Decedent owned X percent (instead of all) of the interests in the company, he allocated only X percent of the losses to the other properties reported on the Form 8939. After the form was filed, the executrix discovered the error.

The executrix is requesting relief under § 301.9100-3 to supplement the Form 8939 to allocate the unrealized losses from Decedent's interests in the company that were not allocated on the timely filed Form 8939.

Law and Analysis:

Section 165(a) provides that there shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

Section 165(c)(2) provides that in the case of an individual, the deduction under § 165(a) is limited to losses incurred in any transaction entered into for profit, though not connected with a trade or business.

Section 1022(a) provides that property acquired from a decedent who died after December 31, 2009, is treated as transferred by gift, and the basis of the person acquiring the property from such a decedent is the lesser of the adjusted basis of the decedent or the fair market value of the property at the date of the decedent's death.

Section 1022(b)(1) provides, in general, that the basis of property under section 1022(a) is increased by basis increase that is allocated to the property.

Section 1022(b)(2)(A) provides, in general, that basis increase is the portion of the aggregate basis increase that is allocated to the property.

Section 1022(b)(2)(B) and (C) provide that the aggregate basis increase is \$1,300,000; and that the aggregate basis increase is increased by--(i) the sum of the amount of any capital loss carryover under section 1212(b), and the amount of any net operating loss carryover under section 172 that would (but for the decedent's death) be carried from the decedent's last taxable year to a later taxable year of the decedent, plus (ii) the sum of the amount of any losses that would have been allowable under section 165 if the property acquired from the decedent had been sold at fair market value immediately before the decedent's death.

Section 1022(d)(1)(A) provides, in general, that the basis of property acquired from a decedent may be increased under section 1022(b) or (c) only if the property was owned by the decedent at the time of death. Section 1022(d)(1)(B) describes property that is considered to be owned by the decedent at the time of death.

Section 1022(d)(2) provides that the basis adjustments under sections 1022(b) and (c) shall not increase the basis of any interest in property above its fair market value in the hands of the decedent as of the date of the decedent's death.

Section 1022(d)(3) provides, in general, that the executor is to allocate the basis adjustments under sections 1022(b) and (c) on the return required by section 6018 and that any allocation made may be changed only as provided by the Secretary.

Section 1022(e) describes property that is considered to be acquired from the decedent for purposes of section 1022.

Rev. Proc. 2011-41, 2011-35 I.R.B. 188, section 4.02(2)(b) provides that the amount of unrealized losses consists solely of the losses described in section 165(c)(1) and (2) from all property acquired from the decedent that would have been allowable as a deduction, if the property had been sold at fair market value immediately before the decedent's death.

Notice 2011-66, 2011-35 I.R.B. 184, section I.A. provides that the executor of the estate of a decedent who died in 2010 makes the Section 1022 Election by filing a Form 8939 on or before November 15, 2011. Notice 2011-76, 2011-40 I.R.B. 479, extended the due date for the Form 8939 and, thus, the election, from November 15, 2011 to January 17, 2012.

Notice 2011-66, section I.D.1, provides that the Internal Revenue Service will not grant extensions of time to file a Form 8939 and will not accept a Form 8939 filed after the due date except in certain circumstances provided in section I.D.2.

One exception in section I.D.2 permits an executor to apply for relief to supplement a timely filed Form 8939 under § 301.9100-3 to allocate Basis Increase (as defined in § 4.02(1) of Rev. Proc. 2011-41) that has not previously been validly allocated. However, relief may be granted only if after filing the Form 8939, the executor discovers additional property to which remaining Basis Increase could be allocated.

In this case, the tax professional incorrectly reported that Decedent owned X percent (instead of all) of the interests in the company, and thus allocated only X percent of the unrealized losses from these interests to the other properties reported on the Form 8939. The exception provided in section I.D.2 of Notice 2011-66 does not apply in this case. Therefore, based upon the facts submitted and the representations made, the requested relief cannot be granted.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied as to whether Decedent's unrealized losses in the company satisfy the requirements of section 162(c)(2).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

James F. Hogan

James F. Hogan
Chief, Branch 4
(Passthroughs & Special Industries)

Enclosures:
Copy for section 6110 purposes
Copy of this letter

cc: